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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

YOSVEL MACHIN-ROMERO Petitioner, v. WARDEN, Operator of the ERO El Paso East Montana Camp; MARY DE ANDA-YBARRA, El Paso ICE Field Office Director; TODD LYONS, Acting Director U.S. Customs and Immigration Enforcement; KRISTI NOEM, U.S. Secretary of Homeland Security; PAMELA BONDI, Attorney General of the United States; Respondents.	Case No. 3:26-cv-00322-KC Agency No. [redacted] PETITION FOR WRIT OF HABEAS CORPUS

Petitioner's Reply to Federal Government's Response and

Request for Clerk's Entry of Default Judgment

I. INTRODUCTION

Petitioner restates and realleges all arguments included in the Petition for Writ of Habeas Corpus. ECF No. 1.

II. REPLY TO RESPONDENTS' ARGUMENTS CONTAINED IN RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS.

A. Petitioner Has Failed to Follow and Comply with the Court's Instructions to Show Concrete Steps to Remove Respondent to Cuba

On February 5, 2026, the Court ordered Respondents to show cause why the application for a writ of habeas corpus should not be granted. Feb. 5, 2026, Order 2, ECF No. 3. More specifically, "Respondents were to specify: the circumstances that make Machin-Romero's removal likely, what concrete steps and obstacles remain to effectuate removal, and the anticipated timeline for completion." ECF No. 8 (citing Feb. 5, 2026, Order 2, ECF No. 3). On February 20, 2026, the Court once again ordered respondents to file a status update as to the February 5, 2026, order to show cause, ECF No. 3. The Court ordered Respondents to specify the following:

> (1) Whether the Cuban government has agreed to accept Machin-Romero for removal,
>
> (2) If not, what obstacles remain to effectuating Machin-Romero's removal, including issuance of travel documents,
>
> (3) If Cuba has denied the request, what, if any, concrete steps have been taken to lawfully remove Machin-Romero to a third country, and
>
> (4) The anticipated timeline for Machin-Romero's removal from the United States.

Id.

Respondents, in their March 13, 2026 "Federal Respondent's Status Report" have failed to comply with the Court's request. ECF 10. Respondents failed to show cause why the application for a writ of habeas corpus should not be granted. Notwithstanding such a failure, Respondents, in what appears to be a boilerplate status report, have only asserted that "ICE-ERO is continuing to request removal to Cuba," and that "[w]hile waiting for a response from Cuba, ERO has also made efforts to effectuate third country removal to Mexico." *Id.* In the next three sentences that follow, Respondents only describe the third-country removal efforts they have effectuated, and nothing else. *Id.* Respondents have thus failed to respond to all four requests made by the Court, as well as failed to show cause why the Petitioner's application for a writ of habeas corpus should not be granted.

B. Petitioner's detention violates his procedural due process rights

Buenrostro is not controlling over Petitioner's detention. On February 18, 2026, the Central District of California issued an order vacating the Board of Immigration Appeals decision upon which *Buenrostro* is predicated, *Yajure Hurtado*, part of its enforcement of a prior classwide declaratory judgment finding—directly contrary to the Fifth Circuit in *Buenrostro*—that 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), applies to class members nationwide. See *Maldonado Bautista et al., v. Santacruz Jr. et al.*, No. 25-01873, ECF No. 116 (C.D. Cal. Feb. 18, 2026). The court ordered that all class members receive individualized notice that they "may be unlawfully detained and may seek release on bond or conditional parole under 8 U.S.C. § 1226(a)." *Id.*

Furthermore, *Buenrosto* was a statutory interpretation opinion only which did not address due process issues. *See* Oral Argument, *Buenrostro-Mendez v. Bondi*, No. 25-cv-20496, at 44:56–45:11 (5th Cir. Feb. 3, 2026), available at

https://www.ca5.uscourts.gov/OralArgRecordings/25/25-20496_2-3- 2026.mp3 ("We have one issue before the Court now: the statutory question. . . .There's not, in other words, a due process claim here.").

Petitioner's case is distinct from *Buenrosto* as he asserted claims in due process, as well as other constitutional, statutory, and regulatory violations, and even the Administrative Procedure Act (APA). ECF. No. 1. Indeed, even before *Buenrostro*, district courts within the Fifth Circuit were already granting habeas petitions for similarly-situated petitioners solely on procedural due process grounds, analyzed under *Mathews v. Eldridge*, 424 U.S. 319 (1976).[1]

Nevertheless, Petitioner does not waive his statutory claims.

C. Petitioner asserted Procedural Due Process claims in his petition for Writ of Habeas Corpus.

On January 4, 2021, Petitioner was released from detention under an Order of Supervision with Immigration and Customs Enforcement (ICE). The Petitioner complied with all reporting duties and appeared before the ICE officer for annual check-ins. ECF. No. 1 Ex. 3: I-220B. Petitioner was issued a work permit, which he renewed over the past 5 years as authorized by the Order of Supervision. ECF. No. 1 Ex. 4: Employment Authorization Document.

Here, Petitioner was arrested and re-detained and his Order of Supervision was revoked without cause by Respondents on November 4, 2025, in Miami, Florida.

An ICE Order of Supervision may be lawfully revoked under 8 C.F.R. § 241.13. The section "special review procedures" that apply where, among other conditions, an "alien has

[1] *See, e.g., Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025) (Cardone, J.); *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690 (W.D. Tex. 2025) (Briones, J.); *Hernandez-Fernandez v. Lyons*, No. 25-cv-00773, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) (Pullman, J.); *Parada-Hernandez v. Johnson*, No. 25-cv-2729, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), R. & R. adopted, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025) (Kinkeade, J.).

provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.13(a).

Revocation authority may be found on Section 241.13(i)(2): "The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future."

Government agencies have a requirement to follow their own regulations. *United States ex rel. Accordi v. Shaughnessy*, 347 US. 260, 268 (1954); *Nat'l Auto. Dealers Ass'n v. Fed. Trade Comm'n*, 127 F.4th 549, 553 (5th Cir. 2025) ("It is a given of administrative law that agencies must follow their own regulations." (citation omitted)); *Am. Stewards of Liberty v. Dep't of the Interior*, 370 F. Supp. 3d 711, 725 (W.D. Tex. 2019) ("Agency action that disregards applicable law is arbitrary and capricious, and must be set aside." (citations omitted)); *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003). Where ICE does not follow its own regulations pertaining to revocation of an order of supervision, a subsequent detention is deemed unlawful, and the petitioner must be released. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release." (citations omitted)); *see also, e.g.*, *Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087, at *25–26 (D. Md. Aug. 25, 2025); *M.S.L. v. Bostock*, No. 6:25-cv-1204-AA, 2025 WL 2430267, at *10 (D. Or. Aug. 21, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017).

The *Buenrostro-Mendez* court did not reach the due process question, confining its analysis and holding to statutory interpretation. *Gomez Hernandez v. ICE Field Off. Dir., El Paso*, Tex., No. 3:26-cv-67-KC, 2026 WL 503958, at *2 (W.D. Tex. Feb. 23, 2026) (citations omitted). "Thus, '*Buenrostro-Mendez* has no bearing on this Court's determination of whether [a habeas petitioner] is being detained in violation of her constitutional right to procedural due process.'" Id. at *2 (citations omitted).

District courts in the Fifth Circuit were also granting habeas petitions on this basis even before *Buenrostro* foreclosed the statutory argument. *See, e.g., Cruz-Reyes v. Bondi*, --- F.Supp.3d ----, 2026 WL 332315, at *5–7 (S.D. Tex. Feb. 3, 2026) (ordering immediate release, as "a post-deprivation bond hearing cannot cure the core violation of Mr. Cruz Reyes's due process rights"); *see also Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025) (ordering a post-deprivation bond hearing for individuals who had been re-detained after release on recognizance); *Parada-Hernandez v. Johnson*, No. 25-cv-2729, 2025 WL 3465958, at *7 N.D. Tex. Oct. 29, 2025) (same), R. & R. adopted, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025).

Indeed, this court has already held that due process claims prevail even after the *Buenrostro* decision. *Diaz-Santana v. Noem et. al.*, 5:26-cv-00380-FB (W.D.Tex. Feb. 24, 2026). *See also Najarro-Montoya v. Noem et. al.*, 5:26-cv-00270-FB (W.D. Tex. Feb 24, 2026).

Other "[f]ederal district courts in Texas have also made this finding subsequent to the Fifth Circuit issuing its opinion in *Buenrostro-Mendez*." *Ochoa v. Vergara*, No. 1:26-cv-266-RP, 2026 WL 482211, at *3 (W.D. Tex. Feb. 20, 2026) (collecting cases). *See also K'naan Mohamud v. Warden, ERO El Paso Camp East Montana et. al.*, 3:26-cv-00456-KC (W.D. Tex. Feb. 26, 2026). In analogous situations post-*Buenrosto*, courts in the Western District of Texas have held that Respondents' detention of a noncitizen with a valid grant of parole in place rendered the

detention unlawful. *See Camacho-Gutierrez*, 2026 WL 195758, at *3 ("[B]ecause DHS re-detained [a petitioner] without notice or an individualized determination in violation of its own regulations, [her] detention is unlawful."); *see also Ramirez-Gavilan v. Collins*, No. 1:25-CV-2052-RP, 2026 WL 274705, at *5 n.7 (W.D. Tex. Jan. 17, 2026) (if a petitioner is subject to mandatory detention under § 1225(b)(2)(A) but released pursuant to parole under § 1182(d)(5), so long as parole was not terminated when petitioner was redetained, he would be "held in violation of the INA—and must be released."); *Hassen v. Noem*, No. EP-26-CV-00048-DB, 2026 WL 446506, at *2 (W.D. Tex. Feb. 9, 2026) ("Because the Government released [p]etitioner [under parole] and permitted him to live in the United States for over a year, they cannot revoke that liberty without an individualized determination of the need to do so."). *See also Mendoza v. Bondi, et. al.*, No. 1:26-cv-00322-RP (W.D. Tex. Feb. 25, 2026.) See also *Kahilo v. Thompson, et. al.*, No. 5:26-cv-00449-DAE (W.D. Tex. Feb. 26, 2026).

There is also significant positive out-of-circuit case law supporting this argument.[2]

Therefore, the Court should still hold that Petitioner's revocation of his Order of Supervision violated his procedural due process rights because Respondents have failed to comply with the requirements as outlined in 8 C.F.R. § 241.13(i)(3).

D. Petitioner asserted Substantive Due Process claims in his petition for Writ of Habeas Corpus.

Petitioner was previously determined not to be a flight risk and was released under an Order of Supervision; there has been no change in material circumstances since his release,

[2] See, e.g., *Ye v. Maldonado*, No. 25-cv-6417, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) (ordering release of petitioners previously released on recognizance and barring re-detention without pre-deprivation process); *Singh v. Noem*, No. 26-cv-00079, 2026 WL 265670 (W.D. Wash. Feb. 2, 2026) (same); *Singh v. Albarran*, No. 25-cv-02006, 2026 WL 445713 (E.D. Cal. Feb. 17, 2026) (recommending same).

therefore there is no lawful purpose for their detention now. ECF No. 1. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

In fact, since Petitioner's release from detention under an order of supervision in 2021, he maintained lawful employment authorization, his wife became a U.S. citizen, his U.S. citizen son was born, and his wife filed an I-130 Relative Petition on his behalf. ECF 1, Ex. 4-7. Furthermore, the Petitioner was arrested and re-detained by Respondents at a supervision appointment on November 4, 2025 while complying with the conditions of his previous release. Such factors would weigh in favor of the Petitioner's continued release and against a finding of danger or flight risk, but Respondents erroneously reached the opposite conclusion.

Respondents' unlawful revocation of Petitioner's valid Order of Supervision and re-detention therefore also violates his substantive due process rights. See *Rodriguez Romero v. Ladwig*, No. 25-cv-1106, 2026 WL 321437 (M.D. La. Feb. 6, 2026); see also *Jacobo Ramirez v. Noem*, --- F.Supp.3d ----, 2025 WL 3270137, at *8–9 (D. Nev. Nov. 24, 2025) (finding petitioners who entered without inspection, some previously released on recognizance, likely to prevail on substantive due process claim).

As such, the Court should hold that Respondents' revocation of Petitioner's order of release on recognizance and re-detention violates Petitioner's substantive due process rights.

E. Respondents' Attempts to Remove Petitioner to Mexico are Unlawful

Respondents have claimed that they are attempting to remove Petitioner to Mexico as a third-country removal. ECF 7, 10. This attempt is unlawful. Petitioner has asserted a fear-based claim to several countries and would need proper notice and the opportunity to be heard if Respondents plan to deport him to a specific third country imminently.

Respondents appear likely to imminently and irreparably violate Petitioner's rights in brazen violation of their statutory, regulatory, and due process obligations. On July 9, 2025, DHS adopted a policy memorandum stating that it would remove non-citizens to third countries with only 24 hours or less notice and no meaningful opportunity to assert a fear-based claim—just as Petitioner successfully did with respect to his home country. *See* Docket No. 3, Exhibit 10 (July 9, 2025 Third Country Removals Memo). This Court should join a host of other recent courts in enjoining Respondents from circumventing the Court's jurisdiction, INS regulations, and due process by removing Petitioner to a third country without mandatory protections. *See, e.g., Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *6 (C.D. Cal. June 25, 2025) (holding "third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings").

The stakes are real. Petitioner's protected status is likely to subject him to persecution and/or torture in a host of third countries that the Government has solicited to accept non-citizens subject to removal. If Respondents indeed are seeking to remove him to a third country, Petitioner would review upon proper notice of which country and likely assert a fear-based claim and demand a real opportunity to be heard, including by moving to reopen his immigration proceedings if necessary. Petitioner must be given his statutory, regulatory, and constitutional right to be meaningfully heard on a fear-based claim prior to removal to a third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) ("last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"); *see also Najjar*, 630 Fed. App'x. 724 (similar); *Aden*, 409 F. Supp. 3d at 1010; *Vaskanyan*, 2025 WL 2014208, at *6.

III. CONCLUSION

The Court should grant the Petition. Respondents have not presented novel arguments that would warrant a different outcome than analogous cases already decided by this Court. Petitioner respectfully requests that the Court grant this petition and order the immediate release of the Petitioner.

DATE: 03/16/2026

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